

# **ETHICS ACT PROCEDURES for BOARDS and COMMISSIONS**

All board and commission members and staff should be familiar with the Executive Branch Ethics Act procedures outlined below.

## **Who Is My Designated Ethics Supervisor (DES)?**

Every board or commission subject to the Ethics Act<sup>1</sup> has several ethics supervisors designated by statute.

- ◆ The chair serves as DES for board or commission members.
- ◆ The chair serves as DES for the executive director.
- ◆ The executive director serves as DES for the staff.
- ◆ The governor is the DES for a chair.<sup>2</sup>

## **What Do I Have To Disclose?**

The Ethics Act requires members of boards and commissions to disclose:

- ◆ Any matter that is a potential conflict of interest with actions that the member may take when serving on the board or commission.
- ◆ Any circumstance that may result in a violation of the Ethics Act.
- ◆ Any personal or financial interest (or that of an immediate family member) in a state grant, contract, lease or loan that is awarded or administered by the member's board or commission.
- ◆ The receipt of certain gifts.

The executive director of the board or commission and its staff, as state employees, must also disclose:

- ◆ Compensated outside employment or services.
- ◆ Volunteer service, if any compensation, including travel and meals, is paid or there is a potential conflict with state duties.

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<sup>1</sup> The Act covers a board, commission, authority, or board of directors of a public or quasi-public corporation, established by statute in the executive branch of state government.

<sup>2</sup> The governor has delegated the DES responsibility to Linda Perez, Administrative Director of the Office of the Governor.

For more information regarding the types of matters that may result in violations of the Ethics Act, board or commission members should refer to the guide, “*Ethics Information for Members of Boards and Commissions*.” The executive director and staff should refer to the guide, *Ethics Information for Public Employees*.” Both guides and disclosure forms may be found on the Department of Law’s ethics website: <http://www.law.state.ak.us/doclibrary/ethics.html>.

### **How Do I Avoid Violations of the Ethics Act?**

- ◆ Make timely disclosures!
- ◆ Follow required procedures!
- ◆ Provide all information necessary to a correct evaluation of the matter!<sup>3</sup>
- ◆ When in doubt, disclose and seek advice!
- ◆ Follow the advice of your DES!

### **What Are The Disclosure Procedures for Board and Commission Members?**

The procedural requirements for disclosures by members are set out in AS 39.52.220 and 9 AAC 52.120. One goal of these provisions is to help members avoid violations of the Ethics Act. The procedures provide the opportunity for members to seek review of matters in advance of taking action to ensure that actions taken will be consistent with the Act.

#### **Procedure for declaring actual or potential conflicts.**

Members must declare potential conflicts and other matters that may violate the Ethics Act on the public record and in writing to the chair.

*Disclosure on the public record.* Members must identify actual and potential conflicts orally at the board or commission’s public meeting in advance of participating in deliberations or taking any official action on the matter.

- ◆ A member must always declare a conflict and may choose to refrain from voting, deliberations or other participation regarding a matter.<sup>4</sup>

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<sup>3</sup> You may supplement the disclosure form with other written explanation as necessary. Your signature on a disclosure certifies that, to the best of your knowledge, the statements made are true, correct and complete. False statements are punishable.

<sup>4</sup> In most, but not all, situations, refraining from participation ensures that a violation of the Ethics Act does not occur. Abstention does not cure a conflict with

- ◆ If a member is uncertain whether participation would result in a violation of the Act, the member should disclose the circumstances and seek a determination from the chair.

*Disclosure in writing at a public meeting.* In addition to an oral disclosure at a board or commission meeting, members' disclosures must be made in writing.

- ◆ If the meeting is recorded, a tape or transcript of the meeting is preserved and there is a method for identifying the declaration in the record, an oral disclosure may serve as the written disclosure.
- ◆ Alternatively, the member must note the disclosure on the Notice of Potential Violation disclosure form and the chair must record the determination.

*Confidential disclosure in advance of public meeting.* Potential conflicts may be partially addressed in advance of a board or commission's public meeting based on the published meeting agenda or other board or commission activity.

- ◆ A member identifying a conflict or potential conflict submits a Notice of Potential Violation to the chair, as DES, in advance of the public meeting.
- ◆ This written disclosure is considered confidential.
- ◆ The chair may seek advice from the Attorney General.
- ◆ The chair makes a written determination, also confidential, whether the disclosed matter represents a conflict that will result in a violation of the Ethics Act if the member participates in official action addressing the matter.<sup>5</sup>
- ◆ If so, the chair directs the member to refrain from participating in the matter that is the subject of the disclosure.
- ◆ An oral report of the notice of potential violation and the determination that the member must refrain from participating is put on the record at a public meeting.<sup>6</sup>

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respect to a significant direct personal or financial interest in a state grant, contract, lease or loan because the Ethics Act prohibition applies whether or not the public officer actually takes official action.

<sup>5</sup> The chair must give a copy of the written determination to the disclosing member. There is a determination form available on the Department of Law's ethics web page. The ethics supervisor may also write a separate memorandum.

<sup>6</sup> In this manner, a member's detailed personal and financial information may be protected from public disclosure.

*Determinations at the public meeting.* When a potential conflict is declared by a member for the public record, the following procedure must be followed:

- ◆ The chair states his or her determination regarding whether the member may participate.
- ◆ Any member may then object to the chair's determination.
- ◆ If an objection is made, the members present, excluding the member who made the disclosure, vote on the matter.
- ◆ Exception: A chair's determination that is made consistent with advice provided by the Attorney General may not be overruled.
- ◆ If the chair, or the members by majority vote, determines that a violation will exist if the disclosing member continues to participate, the member must refrain from voting, deliberating or participating in the matter.<sup>7</sup>

*If the chair identifies a potential conflict,* the same procedures are followed. If possible, the chair should forward a confidential written notice of potential violation to the Office of the Governor for a determination in advance of the board or commission meeting. If the declaration is first made at the public meeting during which the matter will be addressed, the members present, except for the chair, vote on the matter. If a majority determines that a violation of the Ethics Act will occur if the chair continues to participate, the chair shall refrain from voting, deliberating or participating in the matter. A written disclosure or copy of the public record regarding the oral disclosure should be forwarded to the Office of the Governor for review by the chair's DES.

### **Procedures for Other Member Disclosures**

A member's interest in a state grant, contract, lease or loan and receipt of gifts are disclosed by filling out the appropriate disclosure form and submitting the form to the chair for approval. The disclosure forms are found on the Department of Law's ethics website: <http://www.law.state.ak.us/doclibrary/ethics.html>.

### **What Are The Disclosure Procedures for Executive Directors and Staff?**

Ethics disclosures of the executive director or staff are made in writing to the appropriate DES (chair for the executive director and the executive director for staff).

- ◆ Disclosure forms are found on the ethics website, noted above.

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<sup>7</sup> When a matter of particular sensitivity is raised and the ramifications of continuing without an advisory opinion from the Attorney General may affect the validity of the board or commission's action, the members should consider tabling the matter so that an opinion may be obtained.

*Notices of Potential Violations.* Following receipt of a written notice of potential violation, the DES investigates, if necessary, and makes a written determination whether a violation of the Ethics Act could exist or will occur. A DES may seek advice from the Attorney General. If feasible, the DES shall reassign duties to cure a potential violation or direct divestiture or removal by the employee of the personal or financial interests giving rise to the potential violation.

- ◆ These disclosures are not required to be made part of the public record.
- ◆ A copy of a determination is provided to the employee.
- ◆ Both the notice and determination are confidential.

*Other Disclosures.* The DES also reviews other ethics disclosures and either approves them or determines what action must be taken to avoid a violation of the Act. In addition to the disclosures of certain gifts and interests in the listed state matters, state employees must disclose all outside employment or services for compensation.

- ◆ The DES must provide a copy of an approved disclosure or other determination the employee.

### **How Are Third Party Reports of Potential Violations or Complaints Handled?**

Any person may report a potential violation of the Ethics Act by a board or commission member or its staff to the appropriate DES or file a complaint alleging actual violations with the Attorney General.

- ◆ Notices of potential violations and complaints must be submitted in writing and under oath.
- ◆ Notices of potential violations are investigated by the appropriate DES who makes a written determination whether a violation may exist.<sup>8</sup>
- ◆ Complaints are addressed by the Attorney General under separate procedures outlined in the Ethics Act.
- ◆ These matters are confidential, unless the subject waives confidentiality or the matter results in a public accusation.

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<sup>8</sup> The DES provides a copy of the notice to the employee who is the subject of the notice and may seek input from the employee, his or her supervisor and others. The DES may seek advice from the Attorney General. A copy of the DES' written determination is provided to the subject employee and the complaining party. The DES submits a copy of both the notice and the determination to the Attorney General for review as part of the DES' quarterly report. If feasible, the DES shall reassign duties to cure a potential violation or direct divestiture or removal by the employee of the personal or financial interests giving rise to the potential violation.

## **What Are The Procedures for Quarterly Reports?**

Designated ethics supervisors must submit copies of notices of potential violations received and the corresponding determinations to the Attorney General for review by the state ethics attorney as part of the quarterly report required by the Ethics Act.

- ◆ Reports are due in April, July, October and January for the preceding quarter.
- ◆ A sample report may be found on the Department of Law's ethics website.
- ◆ An executive director may file a quarterly report on behalf of the chair and combine it with his or her own report.
- ◆ If a board or commission does not meet during a quarter and there is no other reportable activity, the DES advises Kamie Willis by e-mail at [Kamie.Willis@alaska.gov](mailto:Kamie.Willis@alaska.gov) and no other report is required.

If the state ethics attorney disagrees with a reported determination, the attorney will advise the DES of that finding. If the ethics attorney finds that there was a violation, the member who committed the violation is not liable if he or she fully disclosed all relevant facts reasonably necessary to the ethics supervisor's or commission's determination and acted consistent with the determination.

## **How Does A DES or Board or Commission Get Ethics Advice?**

A DES or board or commission may make a written request to the Attorney General for an opinion regarding the application of the Ethics Act. In practice, the Attorney General, through the state ethics attorney, also provides advice by phone or e-mail to designated ethics supervisors, especially when time constraints prevent the preparation of timely written opinions.

- ◆ A request for advice and the advisory opinion are confidential.
- ◆ The ethics attorney endeavors to provide prompt assistance, although that may not always be possible.
- ◆ The DES must make his or her determination addressing the potential violation based on the opinion provided.

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It is the obligation of each board or commission member, as well as the staff, to ensure that the public's business is conducted in a manner that is consistent with the standards set out in the Ethics Act. We hope this summary assists you in ensuring that your obligations are met.